

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED

July 13, 2010

In the Matter of A. B. GRASAK, Minor.

No. 296081

St. Clair Circuit Court

Family Division

LC No. 08-000086-NA

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Before: HOEKSTRA, P.J., and JANSEN and BECKERING, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Once the petitioner has established a statutory ground for termination by clear and convincing evidence, and the court finds that termination is in the best interests of the child, the trial court must order termination of parental rights. MCL 712A.19b(5). A trial court's determination that statutory grounds for termination have been established by clear and convincing evidence is reviewed under the clearly erroneous standard, as is its best interests determination. MCR 3.977(J); *In re Jenks*, 281 Mich App 514, 516; 760 NW2d 297 (2008).

The trial court did not clearly err in finding that statutory grounds had been established or in finding that termination of respondent's parental rights was in the minor child's best interests. Respondent had a long history of cocaine addiction, untreated bipolar disorder, and unemployment when she gave birth to the child in February 2008. She had relinquished her rights to two older children and two others were in guardianship when the child was born. Respondent had admitted to using cocaine during her pregnancy, and the child tested positive for cocaine at birth. The child was removed from the hospital and placed in foster care. Respondent admitted the allegations in an amended petition. Respondent participated in many services and regained custody of the child in November 2008. However, she tested positive for cocaine again in January 2009, and the child was removed from her custody for a second time. She tested positive again in March, and in April the court granted petitioner's request to file a supplemental petition seeking termination.

The same evidence establishes both MCL 712A.19b(3)(c)(i) and (g). Respondent argues that she was still in the same apartment as when she regained custody of the minor child in November 2008, she had maintained sobriety for seven months, she was in counseling, and she had obtained employment. However, the child initially came within the court's jurisdiction because respondent was addicted to cocaine and had used it during her pregnancy, had untreated mental illness, was unemployed, and because, despite a long history of receiving services, she had been unable to provide proper care and custody for her four older children. Lack of housing was not one of the conditions that led to adjudication. Even if housing had been an issue, respondent did not rectify the situation. The only reason respondent was in the same apartment was because the landlord had chosen not to evict her. She was still behind on her rent and her utilities at the time of the termination hearing.

When the termination hearing began 20 months later, respondent was not taking medication for her mental illnesses. She remained unemployed as of the first day of testimony and, while she found employment before the second day of testimony, it was only part-time. She provided evidence that she had been clean and sober for seven months, but other evidence established that she had relapsed after one year of sobriety on at least two prior occasions. The most recent such relapse happened only about one month after she regained custody of the minor child in November 2008. Under these circumstances, seven months of sobriety does not indicate that respondent has finally conquered her longstanding cocaine addiction.

Respondent did not dispute any of these facts, but asked the trial court to give her more time because she was working hard and making progress toward her goals. However, "the Legislature did not intend that children be left indefinitely in foster care, but rather that parental rights be terminated if the conditions leading to the proceedings could not be rectified within a reasonable time." *In re Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991), interpreting MCL 712A.19b(3)(c)(i). Respondent was unable to rectify the conditions that led to adjudication in the 22 months between the time the minor child was first removed from her custody and the time that respondent's rights were terminated. Given the evidence, the trial court did not clearly err in holding that respondent had failed to rectify the conditions that led to adjudication and had failed to provide proper care and custody, and that there was no reasonable likelihood that she would be able to do either in a reasonable time, considering the child's tender age.<sup>1</sup>

Respondent argues that the only harm the minor child ever suffered occurred after she was placed in foster care. The child was diagnosed with MRSA when her foster mother took her to the doctor for a diaper rash. There was no evidence that established when or how the child contracted this disease. Even if the disease was unrelated to respondent, however, a child is at risk of harm if entrusted to the care of an unemployed, cocaine-addicted mother with untreated

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<sup>1</sup> The trial court erred in relying on MCL 712A.19b(3)(c)(ii), because there was no new condition that would have independently supported the court's assertion of jurisdiction. This error was harmless, however, because the court properly found that clear and convincing evidence established the other statutory grounds for termination. MCL 712A.19b(3); *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

mental illness. Respondent's failure to substantially comply with the court-ordered case service plan, as discussed above, "is evidence that return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well being." *In re Trejo Minors*, 462 Mich 341, 346, n 3; 612 NW2d 407 (2000), quoting MCR 5.973(C)(4)(b) (now MCR 3.976(E)(2)). The trial court did not clearly err in finding that there was a reasonable expectation that the child would be harmed if she were returned to respondent's home.

With regard to the trial court's best interests determination, respondent argues that the trial court should have considered the factors listed in the Child Custody Act but admits they are not applicable and fails to explain why consideration of these factors would lead to a finding that termination of respondent's parental rights was not in the minor's best interests. She states that parents have a fundamental liberty interest in the care and custody of their children but fails to make any argument that her constitutional right to her child was violated. She cites Michigan's policy favoring the preservation of family unity, and argues that, in light of respondent's progress, the court erred in finding that termination was in the child's best interests. We disagree.

Determination of the child's best interests can be based on the record as a whole. *In re Trejo*, 462 Mich at 353. It is well settled that use of the child custody factors is not required in child protective proceedings. *In re JS & SM*, 231 Mich App 92, 102-103; 585 NW2d 326 (1998), overruled in part on other grounds *In re Trejo*, 462 Mich at 353. Here, the record as a whole established that termination of respondent's parental rights was in the minor child's best interests. Respondent had untreated mental illness, an eight-year history of substance abuse, and failed previous attempts at treatment. These problems led to the loss of her older children in the past. The child tested positive for cocaine at birth. Although respondent had been in counseling, she still was not taking her medication for her mental illnesses, and there was no indication that she was able to maintain a drug-free lifestyle for any significant period of time. Respondent was unable to provide stability and permanence, and the child had been in foster care for 20 of her 22 months of life. The trial court did not clearly err by finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Kathleen Jansen  
/s/ Jane M. Beckering